

LAUREN A. MOSKOWITZ (*pro hac vice*)
lmoskowitz@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

PAUL J. RIEHLE (SBN 115199)
paul.riehle@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
Four Embarcadero Center, 27th Floor
San Francisco, CA 94111
Telephone: (415) 591-7500
Facsimile: (415) 591-7510

*Attorneys for Plaintiff, Counter-defendant
Epic Games, Inc.*

[Additional counsel on signature page]

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.,
Plaintiff, Counter-defendant,
v.
APPLE INC.,
Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

Case No. 4:11-cv-06714-YGR-TSH

Case No. 4:19-cv-03074-YGR-TSH

IN RE APPLE IPHONE ANTITRUST
LITIGATION

**UNSEALED EXHIBIT TO JOINT
DISCOVERY LETTER BRIEF
REGARDING CUE AND FEDERIGHI
DEPOSITIONS**

DONALD R. CAMERON, *et al.*,
Plaintiffs,
v.
APPLE INC.,
Defendant.

Judge: Hon. Magistrate Thomas S. Hixson

UNSEALED EXHIBIT TO JOINT DISCOVERY LETTER
BRIEF REGARDING CUE AND FEDERIGHI DEPOSITIONS
Case Nos. 4:20-cv-05640-YGR-TSH, 4:11-cv-06714-YGR-TSH, 4:19-cv-03074-YGR-TSH

Pursuant to the Court's Order re: Motion to Seal (*Epic*, ECF No. 343), Epic Games, Inc. hereby files the attached Exhibit 1 to the Joint Discovery Letter Brief Regarding Cue and Federighi Depositions (*Epic*, ECF No. 261) in the public record.

DATE: March 1, 2021

CRAVATH, SWAINE & MOORE LLP

/s/ Lauren A. Moskowitz

Lauren A. Moskowitz

FAEGRE DRINKER BIDDLE & REATH LLP

PAUL J. RIEHLE (SBN 115199)
Four Embarcadero Center, 27th Floor
San Francisco, CA 94111
Telephone: (415) 591-7500
Facsimile: (415) 591-7510
paul.riehle@faegredrinker.com

CRAVATH, SWAINE & MOORE LLP

CHRISTINE A. VARNEY (*pro hac vice*)
KATHERINE B. FORREST (*pro hac vice*)
GARY A. BORNSTEIN (*pro hac vice*)
YONATAN EVEN (*pro hac vice*)
LAUREN A. MOSKOWITZ (*pro hac vice*)
M. BRENT BYARS (*pro hac vice*)
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700
cvarney@cravath.com
kforrest@cravath.com
gbornstein@cravath.com
yeven@cravath.com
lmoskowitz@cravath.com
mbyars@cravath.com

*Attorneys for Plaintiff, Counter-defendant
Epic Games, Inc.*

Exhibit 1

THEODORE J. BOUTROUS JR., SBN 132099
tboutrous@gibsondunn.com
RICHARD J. DOREN, SBN 124666
rdoren@gibsondunn.com
DANIEL G. SWANSON, SBN 116556
dswanson@gibsondunn.com
JAY P. SRINIVASAN, SBN 181471
jsrinivasan@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213.229.7000
Facsimile: 213.229.7520

VERONICA S. LEWIS (*pro hac vice*)
vlewis@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue, Suite 1100
Dallas, TX 75201
Telephone: 214.698.3100
Facsimile: 214.571.2900

MARK A. PERRY, SBN 212532
mperry@gibsondunn.com
CYNTHIA E. RICHMAN (*pro hac vice*)
crichman@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

**Attorneys for Defendant and Counterclaimant
APPLE INC.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

CASE NO. 4:20-CV-05640-YGR

**DEFENDANT AND COUNTERCLAIMANT
APPLE, INC.'S OBJECTIONS AND
RESPONSES TO PLAINTIFF AND
COUNTER-DEFENDANT EPIC GAMES,
INC.'S FIRST SET OF
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“Federal Rules”), Rule 33 of the Civil Local Rules of the United States District Court for the Northern District of California (“Local Rules”), and all applicable rules and orders of this Court, Defendant and Counterclaimant Apple Inc. (“Apple” or “Defendant”), by and through undersigned counsel, hereby serves its Objections and Responses to Plaintiff and Counter-Defendant Epic Games, Inc.’s (“Epic” or “Plaintiff”) First Set of Interrogatories (“Interrogatories”), dated November 11, 2020.

PRELIMINARY STATEMENT

Apple responds generally that its investigation of facts relevant to this litigation is ongoing. The following responses are made to the best of Apple’s present knowledge, information, and belief. Further investigation may reveal additional facts or information that could lead to additions to, changes in, and/or variations from the responses herein. Without in any way obligating itself to do so, Apple expressly reserves the right to supplement, amend, correct, clarify, or modify its responses as further information becomes available. Apple also reserves the right to use or rely on, at any time, documents, evidence, and other matters in addition to the documents and information produced in response to the Interrogatories, whether or not such documents, evidence, or other matters are newly discovered or are now in existence but have not yet been located.

In each and every Specific Response and Objection, Apple incorporates by reference each and every General Objection, Objection to Definition, and Objection to Instruction. Apple also incorporates by reference each and every Objection to Definition into each and every Objection to Instruction, and vice versa. A Specific Response may repeat a General Objection, Objection to Definition, and/or Objection to Instruction for emphasis or for some other reason. However, the omission of any General Objection, Objection to Definition, and/or Objection to Instruction in any Specific Response is not intended to be, nor should it be construed as, a waiver of any such Objections.

GENERAL OBJECTIONS

1. Apple objects to the Interrogatories, including the Definitions and Instructions, to the extent that they seek to impose obligations that exceed the scope of permissible discovery under the Federal Rules of Civil Procedure, the Local Rules, all applicable rules and orders of this Court, and any

1 agreements between the parties. Apple will construe and respond to the Interrogatories in accordance
2 with the requirements of the Federal Rules and other applicable rules or laws.

3 2. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
4 extent that they: (i) seek information that is not relevant to any party's claims or defenses in the action;
5 (ii) impose a burden disproportionate to the needs of the case; (iii) are unreasonably cumulative or
6 duplicative; (iv) seek information that is obtainable from some other source that is more convenient,
7 less burdensome, or less expensive; or (v) seek information beyond the scope of permissible discovery.

8 3. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
9 extent that they are vague, ambiguous, overbroad, unduly burdensome, and/or fail to state with
10 reasonable particularity the type of information sought therein. Apple further objects to the
11 Interrogatories, including the Instructions and Definitions, to the extent that they seek "all" information
12 concerning the subject matters referenced therein.

13 4. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
14 extent that they seek information contained in documents Apple has produced or expects to produce in
15 response to Plaintiff's Requests for Production. Pursuant to Rule 33(d) of the Federal Rules, Apple
16 refers Plaintiff to the information contained in those documents. Any statement herein that the
17 information sought by a specific Interrogatory is contained in documents that are expected to be
18 produced to Plaintiff shall not be construed as a representation regarding the existence or non-existence
19 of specific documents in Apple's possession, custody, or control and reflects the intention of Apple,
20 subject to its objections, to provide responses to Plaintiff's Requests for Production.

21 5. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
22 extent that they purport to seek discovery more appropriately obtained by means other than these
23 Interrogatories.

24 6. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
25 extent that they seek information protected from discovery by the attorney-client privilege, the work-
26 product doctrine, the common-interest privilege, and/or any other applicable privilege, immunity, or
27 protection. Specific objections on the grounds of privilege are provided for emphasis and clarity only,
28 and the absence of a specific objection should not be interpreted as evidence that Apple does not object

1 to an Interrogatory on the basis of an applicable privilege. The inadvertent disclosure of any
2 information subject to such privilege or protection is not intended to relinquish any privilege or
3 protection and shall not be deemed to be a waiver of any applicable privilege or protection.

4 7. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
5 extent that they seek confidential commercial, business, financial, or competitively sensitive
6 information, trade secrets, or any other proprietary information to Apple, its respective employees, and
7 its clients. Without waiving any objection herein, Apple will only provide confidential or sensitive
8 information in accordance with the Stipulated Protective Order entered in this litigation, as well as the
9 ESI Protocol entered in this litigation, and such other procedures as the parties or Court may establish
10 to protect sensitive or confidential information.

11 8. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
12 extent that they contain characterizations, definitions, arguments, or assumptions. Nothing contained
13 in or absent from Apple's responses or objections shall constitute, or be deemed as, an admission,
14 concession, or agreement that Plaintiff's characterizations, definitions, arguments, or assumptions are
15 correct or accurate. The failure to object to any of the defined terms that are listed in the "Definitions"
16 section of the Interrogatory, but that are not used by Plaintiff in the Interrogatory therein, shall not be
17 construed as a waiver of any objections to the definition of the defined term.

18 9. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
19 extent that they lack foundation, or incorporate allegations and assertions that are disputed or erroneous.
20 By responding and objecting to any Interrogatory, Apple does not admit the correctness of such
21 assertions.

22 10. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
23 extent that they seek information (i) not within the possession, custody, or control of Apple; (ii) as
24 readily available to Plaintiff as to Apple; (iii) already in Plaintiff's possession; (iv) already produced
25 by or requested from other parties or nonparties in this action; or (v) that is public, on the grounds that
26 such Interrogatories are unduly burdensome.

27 11. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
28 extent that they seek discovery from any parent, subsidiary, or affiliate of Apple. Such parents,

1 subsidiaries, or affiliates are not within Apple's control, and to the extent that an Interrogatory seeks
2 such disclosure, it is improper, burdensome, and oppressive. Apple is responding only on behalf of
3 itself and not on behalf of any parent, affiliate, or subsidiary.

4 12. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
5 extent that they seek identification of persons employed by or working at the direction of third parties.

6 13. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
7 extent that they call for information that is subject to a confidentiality agreement, or other restrictions,
8 or to a protective order or other court order entered in another action or proceeding, which prevent
9 disclosure in this action. Apple's disclosure of such information is subject to Apple's compliance with
10 any notice and/or contractual obligations to third parties in advance of disclosure.

11 14. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
12 extent that they purport to impose an obligation to conduct anything beyond a reasonable and diligent
13 search of readily accessible files (including electronic files) where responsive information reasonably
14 would be expected to be found. Any interrogatories that seek to require Apple to go beyond such a
15 search are overbroad and unduly burdensome.

16 15. Apple objects to the Interrogatories, including the Definitions and Instructions, to the
17 extent they rely on terms that are not defined and could be understood to have multiple meanings.

18 16. To the extent that Plaintiff has requested or will seek the same information from third
19 parties, Apple objects to the Interrogatories as duplicative, cumulative, and as seeking information that
20 is obtainable from other sources that are more convenient, less burdensome, or less expensive.

21 17. Apple objects to the Interrogatories on the grounds that they are impermissibly
22 compound. *See* Fed. R. Civ. P. 33(a)(1) (stating a party may serve "no more than 25 written
23 interrogatories, *including all discrete subparts*"); *see also* Advisory Committee Note to 1993
24 Amendment to Rule 33(a)(1) (noting "purpose of this revis[ed] [twenty-five-interrogatory limit] is to
25 reduce the frequency and increase the efficiency of interrogatory practice," further noting "the device
26 can [otherwise] be costly and may be used as a means of harassment"). Numerous of the Interrogatories
27 contain many discrete subparts. Apple further objects to the Interrogatories on the related grounds that
28 they each impermissibly introduce separate and distinct lines of inquiry that are not logically and

factually subsumed within and necessarily related to the Interrogatory’s primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc’ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009).

18. Apple objects to the Interrogatories on the grounds that they violate Federal Rule of Civil Procedure 33(b)(1)(B) because answering them would require Apple to furnish information that is not available to it and/or cannot be given without undue labor and expense. Under Rule 33, a responding party “must furnish information that is *available to it* and that can be given *without undue labor and expense*.” Wright & Miller, Fed. Prac. & Proc. § 2174 (3d ed.) (emphasis added); *see also* Fed. R. Civ. P. 33(b)(1)(B). Parties are “not required to conduct extensive research in order to answer an interrogatory,” *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013), and “interrogatories that require a party to undertake extensive investigations, research, or compilations or evaluations of data for the opposing party”—as some of the Interrogatories undoubtedly do—“are in many circumstances,” as here, “improper.” Wright & Miller, *supra*, § 2174.

19. Apple’s willingness to provide any document or information in response to an Interrogatory shall not be interpreted as an admission that such document or information exists, that it is relevant to a claim or defense in this action, or that it is admissible for any purpose. Apple does not waive its right to object to the admissibility of any document or information produced by any party on any ground.

20. Apple responds to the Interrogatories, including the Definitions and Instructions, without waiving or intending to waive, but rather preserving and intending to preserve, its right to object to any other discovery requests.

OBJECTIONS TO DEFINITIONS

1. Apple objects to the definitions of “and,” “or,” and “and/or” on the grounds that they are vague, ambiguous, overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will construe these terms in accordance with the requirements of the Federal Rules, the Local Rules, and all applicable rules and court orders.

2. Apple objects to the definition of “any” on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will construe this

1 term in accordance with the requirements of the Federal Rules, the Local Rules, and all applicable rules
2 and court orders.

3 3. Apple objects to the definition of “App” on the grounds that it is vague, ambiguous,
4 overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will construe this
5 term in accordance with the requirements of the Federal Rules, the Local Rules, and all applicable rules
6 and court orders.

7 4. Apple objects to the definitions of “Apple,” “You,” and “Your” on the grounds that they
8 are vague, ambiguous, overly broad, and unduly burdensome to the extent the terms are meant to
9 include “all predecessors, successors, subsidiaries, divisions, parents, and/or affiliates thereof, past or
10 present, and all past or present officers, directors, affiliates, agents, employees, consultants and
11 representatives thereof, and any other person acting on behalf of any of the foregoing entities” over
12 which Apple exercises no control, and to the extent that Plaintiff purports to use these terms to impose
13 obligations that go beyond the requirements of the Federal Rules and Local Rules. Apple further
14 objects to the definitions of “Apple,” “You,” and “Your” to the extent that the reference to “all past or
15 present officers, directors, affiliates, agents, employees, consultants and representatives thereof, and
16 any other person acting on behalf of any of the foregoing entities” purports to demand information or
17 documents subject to the attorney-client privilege, the work product doctrine, or any other privilege or
18 protection. In responding to the Interrogatories, Apple will construe these terms to mean Apple Inc.,
19 and limit its responses accordingly.

20 5. Apple objects to the definition of “Concerning” on the grounds that it is vague,
21 ambiguous, overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will
22 construe this term in accordance with the requirements of the Federal Rules, the Local Rules, and all
23 applicable rules and court orders.

24 6. Apple objects to the definition of “Developer” on the grounds that it is vague,
25 ambiguous, overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will
26 construe this term in accordance with the requirements of the Federal Rules, the Local Rules, and all
27 applicable rules and court orders.
28

7. Apple objects to the definition of “Epic” on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will construe this term in accordance with the requirements of the Federal Rules, the Local Rules, and all applicable rules and court orders.

8. Apple objects to the definition of “IAP” on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will construe this term in accordance with the requirements of the Federal Rules, the Local Rules, and all applicable rules and court orders.

9. Apple objects to the definition of “Identify” on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will construe this term in accordance with the requirements of the Federal Rules, the Local Rules, and all applicable rules and court orders.

10. Apple objects to the definition of “Software Store” on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. In responding to the Interrogatories, Apple will construe this term in accordance with the requirements of the Federal Rules, the Local Rules, and all applicable rules and court orders.

11. Apple objects to the definition of “State the Factual Basis” on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in purporting to require Apple to “state with particularity each and every fact that You contend supports that response, contention, allegation, claim, defense, or statement, Including the basis and source of Your knowledge of each fact.” “‘Each and every fact’ interrogatories pose problems for a responding party and a reviewing court. Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to interrogatories.” *Tubbs v. Sacramento Cty. Jail*, 2008 WL 863974, at *1 (E.D. Cal. Mar. 28, 2008) (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007)).

OBJECTIONS TO INSTRUCTIONS

1. Apple objects to Instruction No. 1 stating that “[t]he timeframe for the Interrogatories is unlimited unless specifically stated otherwise” on the ground that such a “[t]imeframe” is overbroad,

unduly burdensome, calls for information that is not related to the claims or defenses in this action, and imposes a burden on Apple disproportionate to the needs of this case.

2. Apple objects to Instruction No. 2 regarding the “worldwide” “geographic scope” of the Interrogatories to the extent that the Interrogatories seek documents and information related to consumers located outside of the United States or their transactions, or transactions, conduct, or activity taking place outside of the United States or involving trade or commerce with foreign nations, because such it is overly broad, unduly burdensome, not relevant to the claims or defenses in this action, or otherwise outside the proper scope of discovery in accordance with the Foreign Trade Antitrust Improvement Act, 15 U.S.C. § 6a.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1:

State the Factual Basis for Apple’s Second Defense, Legitimate Business Justifications (“Apple alleges that, without admitting any liability whatsoever, at all times its conduct was reasonable and that its actions were undertaken in good faith to advance legitimate business interests and had the effect of promoting, encouraging, and increasing competition.”). (Defendant Apple Inc.’s Answer, Defenses, and Counterclaims (ECF No. 66) at 36.)

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 1:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because the definition of “State the Factual Basis” is impermissibly vague, ambiguous, overly broad, and unduly burdensome in purporting to require Apple to “state with particularity each and every fact that You contend supports that response, contention, allegation, claim, defense, or statement, Including the basis and source of Your knowledge of each fact.” “‘Each and every fact’ interrogatories pose problems for a responding party and a reviewing court. Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to interrogatories.” *Tubbs v. Sacramento Cty. Jail*, 2008 WL 863974, at *1 (E.D. Cal. Mar. 28, 2008) (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007)). Apple further objects to this

Interrogatory because it calls for a legal conclusion. Apple further objects to this Interrogatory because it is premature, both because discovery in this case is ongoing and because Legitimate Business Justifications is an affirmative defense that is implicated only after Epic bears its burden to prove the *per se* violations of the Sherman Act and/or California Cartwright Act that it purported to allege in its Complaint. Apple further objects to this Interrogatory to the extent that it improperly attempts to shift the burden of proof to Apple before Epic makes such a showing. Apple further objects to this Interrogatory to the extent that it purports to require Apple to state the facts underlying its affirmative defenses before knowing the facts upon which Epic bases the claims to which such affirmative defenses apply. Apple's responses below assume that Epic's claims under the Sherman Act and/or California Cartwright Act will be based only on the facts currently alleged in the Complaint. Apple disputes both that Epic will be able to prove the facts alleged in the Complaint and also that such facts, even if true, are sufficient to prove an actionable claim under the Sherman Act and/or California Cartwright Act. For the purposes of responding to this Interrogatory only, however, Apple will assume Epic is able to meet its burden to prove a violation of the Sherman Act and/or California Cartwright Act based on the facts alleged in the Complaint.

Subject to, limited by, and without waiving its objections, Apple responds as follows:

With respect to Counts 6 and 9 in Epic's Complaint (Sherman Act § 1 [Tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market] and California Cartwright Act [Tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market]), which allege that "Apple expressly conditions the use of its App Store on the use of its In-App Purchase to the exclusion of alternative solutions in a *per se* unlawful tying arrangement," Complaint ¶ 237, and that Apple has "engaged in a *per se* illegal tying arrangement," *id.* ¶ 278, the factual basis for Apple's affirmative defense of Legitimate Business Justifications is outlined, in part, in Apple's Opposition to Epic's Motion for a Preliminary Injunction (ECF No. 73) ("PI Opposition Brief") and the declarations cited therein, including the sworn expert testimony of Richard Schmalensee, Ph.D., as well as the sworn testimony of Philip W. Schiller. *See, e.g.,* Declaration of Richard Schmalensee, Ph.D. ("Schmalensee Decl.")

(ECF No. 78) at ¶¶ 46–64; Declaration of Philip W. Schiller (“Schiller Decl.”) (ECF No. 74) at ¶¶ 32–45. Each of these declarants could and would testify as to their own sworn testimony.

INTERROGATORY NO. 2:

State the Factual Basis for Apple’s statement that “For years, Epic took advantage of everything Apple’s App Store has to offer. It availed itself of the tools, technology, software, marketing opportunities, and worldwide customer reach that Apple provided”, Including by Identifying all such “tools, technology, software, marketing opportunities, and worldwide customer reach”; Apple’s reasons for providing to Epic such “tools, technology, software, marketing opportunities, and worldwide customer reach”; and the revenue, costs, expenses, and profits to Apple from providing to Epic each such “tool[], technology, software, marketing opportunit[y], and worldwide customer reach”. (Defendant Apple Inc.’s Opposition to Epic Games, Inc.’s Motion for a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue (ECF No. 36) at 1.)

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 2:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because the definition of “State the Factual Basis” is impermissibly vague, ambiguous, overly broad, and unduly burdensome in purporting to require Apple to “state with particularity each and every fact that You contend supports that response, contention, allegation, claim, defense, or statement, Including the basis and source of Your knowledge of each fact.” “‘Each and every fact’ interrogatories pose problems for a responding party and a reviewing court. Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to interrogatories.” *Tubbs v. Sacramento Cty. Jail*, 2008 WL 863974, at *1 (E.D. Cal. Mar. 28, 2008) (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007)). Apple further objects to this Interrogatory because it calls for a legal conclusion. Apple further objects to this Interrogatory because it is premature, given that discovery in this case is ongoing. Apple further objects to this Interrogatory because it is compound as it contains numerous discrete subparts that introduce separate and distinct lines of inquiry that are not logically and factually subsumed within and necessarily related to the

primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc'ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009). Due to the compound nature of the interrogatories as drafted, Apple objects to this Interrogatory on the ground that it is excessive as Plaintiff has exceeded the 25-written-interrogatory limit per party pursuant to Fed. R. Civ. P. 33(a)(1). Apple further objects to this Interrogatory on the grounds that it violates Federal Rule of Civil Procedure 33(b)(1)(B) because answering it would require Apple to furnish information that is not available to it and/or cannot be given without undue labor and expense. Under Rule 33, a responding party “must furnish information that is *available to it* and that can be given *without undue labor and expense*.” Wright & Miller, Fed. Prac. & Proc. § 2174 (3d ed.) (emphasis added); *see also* Fed. R. Civ. P. 33(b)(1)(B). Parties are “not required to conduct extensive research in order to answer an interrogatory,” *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013), and “interrogatories that require a party to undertake extensive investigations, research, or compilations or evaluations of data for the opposing party,” Wright & Miller, *supra*, § 2174—as this Interrogatory undoubtedly does, including by requesting “the revenue, costs, expenses, and profits to Apple from providing to Epic each such ‘tool[], technology, software, marketing opportunit[y], and worldwide customer reach’”—“are in many circumstances,” as here, “improper.” Wright & Miller, *supra*, § 2174. Apple further objects to this Interrogatory to the extent that it is overbroad and seeks information that is neither relevant to the subject matter of this litigation nor proportional to the needs of the case. Apple further objects to this Interrogatory because it seeks Apple’s protected trade secrets and other sensitive, proprietary information that would pose security and business risks to Apple and risks to Apple users’ security and privacy if disclosed. Thus, the burden of fully responding would outweigh the utility of this information.

Subject to, limited by, and without waiving its objections, Apple responds as follows:

Apple has provided Epic with an array of benefits, including tools, technology, software, marketing opportunities, facilitation of transactions through the safe and secure App Store, and yet another channel for distribution of Epic software to iPhone customers.

In addition, Apple supports developers, including Epic, in a variety of ways, investing billions in tools, software, and technology that encourage innovation, make it as easy as possible for

1 developers to bring their ideas to life on the iPhone, and bring more apps to its users. In particular,
 2 for a nominal \$99 fee for membership in the Apple Developer Program, Apple provides developers
 3 like Epic with an assortment of tools, resources, and support to create and deliver software to
 4 customers around the world. As a member of the App Developer Program, Epic has gained full
 5 access to a comprehensive set of tools to configure app services, manage its development teams, and
 6 submit new apps and updates, including the following:¹ Xcode; App Store Connect (including
 7 TestFlight); Transporter; Certificates, Identifiers & Profiles; CloudKit Dashboard; Create ML;
 8 MapKit JS Dashboard; Reality Composer; Reality Converter; Snapshots Studio (beta); SF Symbols;
 9 Classroom and Schoolwork; Metal; and more. For example, Epic and other developers have access
 10 to 150,000 iOS Application Programming Interfaces (APIs), technical tools that simplify and
 11 accelerate the development process, across Apple's iOS. This is an exponential increase over the
 12 number of APIs available to developers in the past. These tools, technology, and software are
 13 protected by copyrights, patents, and other intellectual property (IP) protections and subject to license
 14 agreements for their use. Apple makes them available to developers who seek to contribute to the
 15 safe and reliable platform that Apple created.

16 As a member of the App Developer Program, Epic has also been able to download and install
 17 beta versions of operating systems—including iOS beta, iPadOS beta, macOS beta, watchOS beta,
 18 and tvOS beta—so its apps will be ready for the latest public releases. Epic has been afforded the
 19 opportunity to build its apps with a comprehensive set of services and capabilities that allowed it to
 20 deliver advanced features to its users and build intuitive, multi-faceted experiences that are genuinely
 21 seamless. Among the services and capabilities made available to Epic are the following: AirPlay;
 22 AirPrint; App Clips; Apple Pay; ARKit; Business Chat; CarPlay; CloudKit; Core ML; Face ID and
 23 Touch ID; FairPlay Streaming; GameKit; Handoff; HealthKit; HomeKit; In-App Purchase and
 24 Subscriptions; Mac Catalyst; MapKit; MusicKit; Network Extensions; PassKit; Push Notifications;

27 ¹ Apple also offers many app development resources—including its Xcode development
 28 software—completely free of charge, regardless of membership in the Developer Program. *See*
 Xcode 12, <https://developer.apple.com/xcode/>.

1 SiriKit and Shortcuts; Sign in with Apple; ResearchKit and CareKit; System Extensions and
 2 DriverKit; Widgets; and more.

3 *Fortnite* alone has used more than 400 of Apple's unique API frameworks, five different
 4 versions of Apple's SDK, and six unique Xcode builds. Over the past two years, Epic has received as
 5 much or more of these benefits and support services from Apple as any other developer on the App
 6 Store. In particular, Epic has made great use of Apple-provided tools like TestFlight, VOIP, Stickers,
 7 iCloud document storage, ARKit, Messages Extension, ReplayKit, and Push Notifications.

8 With respect to distribution, Epic has also been able to take advantage of Apple Business
 9 Manager and Apple School Manager; Ad Hoc (which allows a limited number of users to install
 10 Epic's apps directly on their Apple devices for testing and internal distribution); and Developer ID
 11 (which allows Epic to distribute its Mac apps, plug-ins, and installer packages outside of the Mac
 12 App Store by signing them with a Developer ID certificate and having them notarized by Apple).

13 Epic has also been able to take advantage of Developer Events (through which developers can
 14 learn how to take their apps to the next level with technical details and guidance from Apple experts
 15 at events for program members); Technical Support (*e.g.*, developers can request code-level support
 16 from technical support engineers who can help troubleshoot their app's code or provide solutions that
 17 will fast-track their development); Developer Forums (through which developers can ask questions
 18 and respond to posts on developing for Apple platforms with Apple engineers and other developers);
 19 and Membership Support (*e.g.*, developers can get help by phone or email on account management,
 20 tools, and distribution, at no cost). Specifically, in the two years since *Fortnite* was first launched on
 21 the App Store in March 2018, *Fortnite* has been reviewed more than 200 times by Apple's app
 22 reviewers, and has had Apple push more than 140 unique updates to Apple's customers. Apple's
 23 App Store team frequently provided all-hands-on-deck treatment to address Epic's asks, which often
 24 involved short-turnaround support requests, which Apple consistently accommodated. This
 25 ultimately led Apple to bring a business development colleague stationed abroad onto the Epic
 26 relationship team, so that Apple could provide Epic with 24-hour coverage.

27 Following *Fortnite*'s first year on the App Store, Apple continued to work vigorously to meet
 28 Epic's frequent and labor-intensive demands. For example, in 2019 alone, Apple expedited app

1 review in response to almost all of Epic’s more than 80 rush requests, even though developers are
2 typically required to make such expedited requests only in extenuating circumstances. Apple
3 similarly expedited *Fortnite* updates across App Store storefronts on several occasions when Epic
4 proclaimed that its particular launch timing was critical in order to ensure seamless and simultaneous
5 cross-play across different platforms, like iOS and those related to game-consoles like Xbox and
6 PlayStation.

7 In addition to providing engineering, technical, and hardware-related support, Apple has also
8 provided Epic with a significant amount of marketing and promotion support for *Fortnite*—again, as
9 much as Apple has provided to any other game in recent history. For example, Apple has provided
10 both paid and organic marketing for *Fortnite* on iOS, including through Apple’s App Store mailing
11 lists. From March 15, 2018 through August 14, 2020, Apple paid for advertising on various media
12 channels that drove almost a half-million *Fortnite* transactions at a channel level (*i.e.*, transactions
13 that occurred within 24 hours of an ad-click directing users to the App Store, where they then
14 downloaded the *Fortnite* game for the first time). In addition, Apple advertising drove more than
15 100,000 additional *Fortnite* (non-first-time) re-downloads during that same period. In the 11 months
16 preceding the removal of *Fortnite* from the App Store on August 13, 2020, Apple spent
17 approximately one million dollars on paid media promotions of *Fortnite*. And through its mailing
18 lists, Apple has sent over 500 million marketing communications about *Fortnite* to end users.

19 Apple has also published many social media posts promoting *Fortnite* on Apple’s own
20 Twitter and Facebook accounts—a form of support that Epic has frequently pressed Apple to provide,
21 given Epic’s heavy use of social media to promote its products and build its community. To promote
22 concerts taking place in *Fortnite*, Apple has featured the app on the App Store and in Apple Music,
23 and placed billboards in New York’s Times Square and LA Live to promote an in-app *Fortnite*
24 concert with DJ Marshmello. Apple responded to repeated requests by Epic to permit *Fortnite* to
25 “take over” the App Store, featuring the app prominently on the App Store’s most sought-after and
26 frequented spaces. In fact, no other game has ever been featured as prominently on the App Store at
27 any time either before or since. Such placement on the App Store substantially drives growth in a
28 particular app’s user base because the individuals that frequent these App Store “tabs” are a self-

1 selecting pool of curious iOS users who are open to browsing and downloading new games or
2 reengaging with a favorite game. In addition, Apple has run numerous large editorial features for
3 multiple Epic apps in the App Store every few weeks—for example, art placement at the top of the
4 App Store “Games” tab, as well as other “major beats” features and a host of smaller ones. In fact,
5 between the day that it launched in March 2018 and its removal in August 2020, the *Fortnite* app was
6 almost always featured on some portion of the App Store in one of its 175 storefronts worldwide.

7 Apple has also consistently provided consultations to Epic to help the company improve its
8 own marketing, especially its performance marketing. For example, Apple has connected Epic’s
9 *Fortnite* team with Apple personnel in the UAE, Latin America, South Korea, and other regions to
10 provide market intelligence and feature opportunities in those regions to support Epic’s expansion
11 efforts. And while all developers to some degree take advantage of the support and guidance that
12 Apple provides, again, Epic has demanded a much greater degree of support from Apple. For
13 example, Apple has held weekly telephone check-ins with Epic representatives to stay abreast of
14 issues and coordinate efforts—a much higher degree of contact than Apple has with other game
15 developers. And when Epic launched a new *Fortnite* version or announced new features, Apple
16 provided Epic with feedback on, among other things, gameplay design, marketing, monetization, and
17 best practices with Apple’s technology.

18 In addition Apple acknowledges and supports the thriving ecosystem of third-party tools and
19 services that developers use to build apps, including Unreal Engine, a game-development software
20 platform on which Epic bases many of its own games, like *Fortnite*, and that it licenses to other
21 developers to use as the software platform for their apps. In fact, Apple has gone above and beyond
22 to support and strengthen Unreal Engine’s capabilities on iOS and Mac.

23 By participating in Apple’s Developer Program and agreeing to Apple’s rigorous quality,
24 reliability, safety, security, and privacy standards and app review procedures, Epic gained access to
25 another channel for reaching customers. More than 130 million people have downloaded *Fortnite* on
26 the iPhone, and Epic has earned more than \$550 million through iOS alone.

In addition to the above response, Apple has produced to Epic a number of documents from the agreed custodians that relate to the tools, technology, software, marketing opportunities, and worldwide customer reach that Apple provided.

INTERROGATORY NO. 3:

State the Factual Basis for Apple's statements that the iOS App Store, Apple's IAP, or Apple's StoreKit APIs are "integrated" into each other, the "iOS infrastructure" or the "App Store software platform". (Joint Case Management Statement (ECF No. 120) at 5; Defendant Apple Inc.'s Opposition to Epic Games, Inc.'s Motion for a Preliminary Injunction (ECF No. 73) at 19-21.)

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 3:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because the definition of "State the Factual Basis" is impermissibly vague, ambiguous, overly broad, and unduly burdensome in purporting to require Apple to "state with particularity each and every fact that You contend supports that response, contention, allegation, claim, defense, or statement, Including the basis and source of Your knowledge of each fact." "Each and every fact" interrogatories pose problems for a responding party and a reviewing court. Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to interrogatories." *Tubbs v. Sacramento Cty. Jail*, 2008 WL 863974, at *1 (E.D. Cal. Mar. 28, 2008) (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007)). Apple further objects to this Interrogatory because it is impermissibly vague and ambiguous, including as to the undefined term "integrated," which prevents Apple from responding in any meaningful way and without accepting Plaintiff's improper characterizations. Apple further objects to this Interrogatory because it calls for a legal conclusion. Apple further objects to this Interrogatory because it is premature, given that discovery in this case is ongoing. Apple further objects to this Interrogatory because it is compound as it contains numerous discrete subparts that introduce separate and distinct lines of inquiry that are not logically and factually subsumed within and necessarily related to the primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior*

1 *Commc'ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009). Due to the compound
 2 nature of the interrogatories as drafted, Apple objects to this Interrogatory because it is excessive as
 3 Plaintiff has exceeded the 25-written-interrogatory limit per party pursuant to Fed. R. Civ. P.
 4 33(a)(1). Apple further objects to this Interrogatory to the extent that it is overbroad and seeks
 5 information that is neither relevant to the subject matter of this litigation nor proportional to the needs
 6 of the case. Apple further objects to this Interrogatory because it seeks Apple's protected trade
 7 secrets and other sensitive, proprietary information that would pose security and business risks to
 8 Apple and risks to Apple users' security and privacy if disclosed. Thus, the burden of fully
 9 responding would outweigh the utility of this information.

10 Subject to, limited by, and without waiving its objections, Apple responds as follows:

11 The factual basis for the cited statements regarding “integration,” including in Apple's PI
 12 Opposition Brief at 19–21, are cited in Apple's PI Opposition Brief and include the declarations cited
 13 therein, including the sworn testimony of Philip W. Schiller, as well as the sworn expert testimony of
 14 Richard Schmalensee, Ph.D. and Lorin M. Hitt, Ph.D. *See, e.g.*, PI Opposition Brief at 21 (noting
 15 “Apple's integration of its StoreKit APIs into the App Store software platform (and indeed, the
 16 integration of the App Store with the iPhone) . . . offers numerous benefits to consumers and
 17 developers”) (citing Schiller Decl. at ¶¶ 34–36; Schmalensee Decl. at ¶¶ 31, 34–37); *see also* PI
 18 Opposition Brief at 19 (noting “IAP is part of an integrated service delivered in the form of a single
 19 transaction, not a separate product” and Apple's “commission is the return on Apple's investment in
 20 the App Store and the full suite of IP, tools, and services Apple offers to developers”) (citing
 21 Schmalensee Decl. at ¶¶ 29, 44–45, 57; Schiller Decl. at ¶ 7; Declaration of Lorin M. Hitt, Ph.D. (“Hitt
 22 Decl.”) (ECF No. 77) at ¶ 75). Each of these declarants could and would testify as to their own sworn
 23 testimony.

24 Moreover, with respect to “integrat[ion],” the Court noted in its order granting in part and
 25 denying in part Plaintiff's Motion for Preliminary Injunction that “the IAP system appears to be
 26 integrated with the App Store and, historically, to have never been a separate product.” ECF No. 118
 27 at 23; *see also id.* (“Based upon the current record, the Court concludes that Epic Games has not yet
 28

shown that the IAP system is a separate and distinct service from iOS app distribution sufficient to constitute a ‘tie’ under antitrust law.”).

INTERROGATORY NO. 4:

State the Factual Basis for Mike Schmid’s statements that “Epic consistently threatened to release the game update on other platforms first, leaving the App Store behind, if Apple could not accommodate their requests”, and “[o]n a variety of occasions, Epic personnel have told me that if Apple did not comply with its demands, Epic would simply terminate its relationship with Apple and remove its games off of the iOS platform. Epic has repeatedly told me that it could do this because Apple is the ‘smallest piece of the pie’ when it came to *Fortnite* revenue. On several occasions, Epic personnel have told me that Apple represents just seven percent of Epic’s revenue”, Including which Epic employees made which statements, when each statement was communicated, and by which medium each statement was communicated. (Declaration of Mike Schmid in Support of PI Opposition Brief (“Schmid Decl.”) (ECF No. 79) at ¶¶ 8, 18.)

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 4:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because the definition of “State the Factual Basis” is impermissibly vague, ambiguous, overly broad, and unduly burdensome in purporting to require Apple to “state with particularity each and every fact that You contend supports that response, contention, allegation, claim, defense, or statement, Including the basis and source of Your knowledge of each fact.” “‘Each and every fact’ interrogatories pose problems for a responding party and a reviewing court. Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to interrogatories.” *Tubbs v. Sacramento Cty. Jail*, 2008 WL 863974, at *1 (E.D. Cal. Mar. 28, 2008) (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007)). Apple further objects to this Interrogatory because the information it seeks is not the proper subject of an interrogatory and is more properly suited to a deposition of Mike Schmid, the individual who has sworn to have personal knowledge of the information related thereto. *See, e.g., Whittington v. City of*

Cuero, Texas, 2007 WL 737484, at *3 (S.D. Tex. Mar. 5, 2007) (sustaining objection to interrogatory on ground that it was “unusual, burdensome and more properly accomplished by the taking of depositions”); *Smith v. Guthrie*, 2005 WL 8164952, at *2 (N.D. Fla. Nov. 8, 2005) (recognizing interrogatory seeking descriptions of conversations between defendant and plaintiff “may be more appropriate as a deposition question”). Apple further objects to this Interrogatory because it is compound as it contains numerous discrete subparts that introduce separate and distinct lines of inquiry that are not logically and factually subsumed within and necessarily related to the primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc’ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009). Due to the compound nature of the interrogatories as drafted, Apple objects to this Interrogatory because it is excessive as Plaintiff has exceeded the 25-written-interrogatory limit per party pursuant to Fed. R. Civ. P. 33(a)(1).

Subject to, limited by, and without waiving its objections, Apple responds as follows:

As is made clear in the sworn Declaration of Mike Schmid in Support of Apple’s PI Opposition Brief (ECF No. 79), the factual basis for Mr. Schmid’s testimony is Mr. Schmid’s “personal knowledge of the matters stated [t]herein,” including his “personal knowledge and experience concerning Apple’s App Store team and Worldwide Developer Relations (‘WWDR’ or ‘Developer Relations’) team, and the many tools, services, and benefits that Apple provides developers,” which includes his efforts “work[ing] particularly closely with Epic Games, Inc. and its affiliates (collectively, ‘Epic’ or ‘Epic Games’).” ECF No. 79 at ¶¶ 1–2. As Mr. Schmid stated, “if called upon to do so, [he] could and would competently testify [t]hereto.” *Id.* at ¶ 1.

INTERROGATORY NO. 5:

State the Factual Basis for Mike Schmid’s statement that “Epic has repeatedly leveraged the global phenomenon that was *Fortnite* to coerce platforms to change their rules. For example, in September 2018, Epic quietly updated *Fortnite* to enable cross-platform play between PlayStation and Xbox. This was explicitly against PlayStation’s rules and Epic pushed PlayStation into a difficult situation with its own user base, where it was forced to make a significant change on Epic’s terms, not its own. Epic’s strategy of coercing platforms for its own gain, under the guise of being ‘pro-gamer,’

1 is something Epic continues to do.” (Declaration of Mike Schmid in Support of Defendant Apple Inc.’s
2 Opposition to Plaintiff’s Motion for a Preliminary Injunction (ECF No. 79) at ¶ 19.)

3 **OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 5:**

4 Apple restates and incorporates its Preliminary Statement, General Objections, Objections to
5 Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further
6 objects to this Interrogatory on the following grounds:

7 Apple objects to this Interrogatory because the definition of “State the Factual Basis” is
8 impermissibly vague, ambiguous, overly broad, and unduly burdensome in purporting to require Apple
9 to “state with particularity each and every fact that You contend supports that response, contention,
10 allegation, claim, defense, or statement, Including the basis and source of Your knowledge of each
11 fact.” “‘Each and every fact’ interrogatories pose problems for a responding party and a reviewing
12 court. Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to
13 interrogatories.” *Tubbs v. Sacramento Cty. Jail*, 2008 WL 863974, at *1 (E.D. Cal. Mar. 28, 2008)
14 (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007)). Apple further objects to this
15 Interrogatory because the information it seeks is not the proper subject of an interrogatory and is more
16 properly suited to a deposition of Mike Schmid, the individual who has sworn to have personal
17 knowledge of the information related thereto. *See, e.g., Whittington v. City of Cuero, Texas*, 2007 WL
18 737484, at *3 (S.D. Tex. Mar. 5, 2007) (sustaining objection to interrogatory on ground that it was
19 “unusual, burdensome and more properly accomplished by the taking of depositions”); *Smith v.*
20 *Guthrie*, 2005 WL 8164952, at *2 (N.D. Fla. Nov. 8, 2005) (recognizing interrogatory seeking
21 descriptions of conversations between defendant and plaintiff “may be more appropriate as a deposition
22 question”).

23 Subject to, limited by, and without waiving its objections, Apple responds as follows:

24 As is made clear in the sworn Declaration of Mike Schmid in Support of Apple’s PI Opposition
25 Brief (ECF No. 79), the factual basis for Mr. Schmid’s testimony is Mr. Schmid’s “personal knowledge
26 of the matters stated [t]herein,” including his “personal knowledge and experience concerning Apple’s
27 App Store team and Worldwide Developer Relations (‘WWDR’ or ‘Developer Relations’) team, and
28 the many tools, services, and benefits that Apple provides developers,” which includes his efforts

“work[ing] particularly closely with Epic Games, Inc. and its affiliates (collectively, ‘Epic’ or ‘Epic Games’).” ECF No. 79 at ¶¶ 1–2. As Mr. Schmid stated, “if called upon to do so, [he] could and would competently testify [t]hereto.” *Id.* at ¶ 1.

INTERROGATORY NO. 6:

Identify all methods, processes, and/or protocols through which Apple contends that the iOS App Store “ensure[s] reliability, safety, security, and privacy” of iOS devices differently and/or better than methods, processes, and/or protocols that could be taken by a non-Apple Developer or Software Store, and State the Factual Basis for Apple’s contention. (Defendant Apple Inc.’s Opposition to Epic Games, Inc.’s Motion for a Preliminary Injunction (ECF No. 73) at 7.)

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 6:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because the definition of “State the Factual Basis” is impermissibly vague, ambiguous, overly broad, and unduly burdensome in purporting to require Apple to “state with particularity each and every fact that You contend supports that response, contention, allegation, claim, defense, or statement, Including the basis and source of Your knowledge of each fact.” “‘Each and every fact’ interrogatories pose problems for a responding party and a reviewing court. Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to interrogatories.” *Tubbs v. Sacramento Cty. Jail*, 2008 WL 863974, at *1 (E.D. Cal. Mar. 28, 2008) (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007)). Apple further objects to this Interrogatory because it is premature, given that discovery in this case is ongoing. Apple further objects to this Interrogatory because it is compound as it contains numerous discrete subparts that introduce separate and distinct lines of inquiry that are not logically and factually subsumed within and necessarily related to the primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc’ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009). Due to the compound nature of the interrogatories as drafted, Apple objects to this Interrogatory because it is excessive as Plaintiff has exceeded the 25-written-interrogatory limit per party pursuant to Fed. R.

1 Civ. P. 33(a)(1). Apple further objects to this Interrogatory to the extent that it is overbroad and seeks
 2 information that is neither relevant to the subject matter of this litigation nor proportional to the needs
 3 of the case. Apple further objects to this Interrogatory because it seeks Apple's protected trade secrets
 4 and other sensitive, proprietary information that would pose security and business risks to Apple and
 5 risks to Apple users' security and privacy if disclosed. Thus, the burden of fully responding would
 6 outweigh the utility of this information. Apple further objects to this Interrogatory because it is
 7 impermissibly vague and ambiguous, including as to the following undefined terms or phrases:
 8 "methods, processes, and/or protocols," "differently," and "better," which prevent Apple from
 9 responding in any meaningful way and without accepting Plaintiff's improper characterizations.

10 Subject to, limited by, and without waiving its objections, Apple responds as follows:

11 Apple has built a reputation for quality products that also protect user security and privacy,
 12 both through the creation of high-quality devices, like the iPhone, that contain built-in privacy
 13 features and software, and through operation of the App Store, which is designed to ensure that apps
 14 meet Apple's standards, add value to users, and safeguard users' privacy and security. The high level
 15 of security, privacy, and quality is a reason that people choose Apple products.

16 Among other consumer protections embedded in the App Store platform, and consistent with
 17 Apple's overall philosophy of putting the user experience first, the App Store employs a human-led
 18 app review process, described more fully in Apple's Response to Interrogatory No. 8, which ensures
 19 that apps meet Apple's rigorous standards for reliability, quality, safety, security, and privacy before
 20 they can be distributed to Apple's customers. This process includes steps designed to uphold Apple's
 21 standards, including confirmation that the app is free from known malware, use of signatures and
 22 encryption to ensure safe distribution via the App Store, verification of the digital signatures upon
 23 download to confirm that the app has not been tampered with or altered in any way, and revocation of
 24 signing certificates for developer accounts determined to be malicious. Most importantly, however,
 25 Apple has a real-life person download and open every app to review it for compliance with Apple's
 26 rigorous App Store Review Guidelines ("Guidelines"). As a result of these measures, consumers can
 27 trust that what they intend to download, whether that be an app or in-app content, is what they will
 28 receive.

Apple’s guarantee that all iOS apps available to end users are reviewed for compliance with the Guidelines ensures a level of safety and trust far greater than on competing platforms—including, notably, Google’s Android.² Unlike Apple, Google initially (and for many years thereafter) did not conduct any screening of apps distributed through its app marketplace. In 2015, Google eventually began reviewing apps before publication in its Google Play Store after several significant privacy and security breaches.³ And since then, Google has only moved closer to Apple’s model of upfront review and curation. In 2018, for instance, Google began notifying users when they are installing apps that are rarely installed in the Android ecosystem.⁴ And last year, Google announced plans to take more time to review apps from developers that “don’t yet have a track record with us” so that Google can “do more thorough checks before approving apps to go live in the store.”⁵ These changes are an implicit acknowledgement that Apple’s more controlled approach to app distribution provides greater protection for consumers.

Still, in part because Google relies primarily on algorithm-based review processes and has resisted the degree of human review that Apple has always employed, Google has continued to grapple with serious security and privacy breaches even with additional vetting and controls.⁶ Just last month, for instance, researchers discovered more than 20 fake Minecraft apps on Google Play that, once downloaded, start delivering a constant stream of unwanted ads.⁷ Security reports

² Internet Security Threat Report, Symantec, at 11 (Apr. 2016) (“Apple is well-known for its stringent screening processes, which is why the number of malicious iOS apps is so much smaller than for Android.”), <https://docs.broadcom.com/doc/istr-21-2016-en>.

³ See Creating Better User Experiences on Google Play (March 17, 2015), <https://android-developers.googleblog.com/2015/03/creating-better-user-experiences-on.html>

⁴ See Google Play Protect in 2018: New Updates to Keep Android Users Secure (Feb. 26, 2019), <https://security.googleblog.com/2019/02/google-play-protect-in-2018-new-updates.html>.

⁵ See Improving the Update Process with Your Feedback (Apr. 15, 2019), <https://android-developers.googleblog.com/2019/04/improving-update-process-with-your.html>

⁶ See, e.g., Andy Greenberg, *How Spies Snuck Malware Into the Google Play Store—Again and Again*, Wired (April 28, 2020), <https://www.wired.com/story/phantomlance-googleplay-malware-apt32/>; Tim Fisher, *Is Google Play Safe?*, Lifewire (March 6, 2020), <https://www.lifewire.com/is-google-playsafe-153675>.

⁷ See *Over 20 Malicious Minecraft Android Apps Found on Google Play*, PC Mag (Nov. 24, 2020), <https://www.pcmag.com/news/over-20-malicious-minecraft-android-apps-found-on-google>

frequently show that there is far more malicious software on Android and other more permissive platforms than on iOS. In 2018, Android accounted for 47.15% and Windows/PC accounted for 35.82% of malware infections; by contrast, the iPhone platform accounted for just 0.85%.⁸ Similarly, a 2013 U.S. Department of Homeland Security study found that 79% of mobile device malware attacks were for the Android platform, and only 0.7% for iOS.⁹ And Android app stores—including Google Play—have a significantly higher number of harmful apps than the App Store.¹⁰

INTERROGATORY NO. 7:

Identify all synergies and other benefits that Apple contends result from having the iOS App Store be the only Software Store on iOS and all synergies and other benefits that Apple contends would be unachievable if there were other Software Stores on iOS, and State the Factual Basis for Apple's contentions.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 7:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because it is impermissibly vague, and ambiguous, including as to the undefined terms “synergies and other benefits” and “unachievable,” which prevent Apple from responding in any meaningful way and without accepting Plaintiff's improper characterizations. Apple further objects to this Interrogatory because it improperly seeks a response that is the province of expert testimony well in advance of the parties' deadline for disclosing expert reports. Apple further objects to this Interrogatory because it is compound as it contains at least two discrete subparts that introduce separate and distinct lines of inquiry that are not logically and factually subsumed within and

play#:~:text=As%20Graham%20Cluley%20reports%2C%20security,criminals%20to%20take%20advantage%20of.

⁸ See Nokia Threat Intelligence Report – 2019, Nokia, <https://pages.nokia.com/T003B6-Threat-Intelligence-Report-2019.html>.

⁹ See Roll Call Release, U.S. Dep't of Homeland Security & Federal Bureau of Investigation (July 23, 2013), <https://info.publicintelligence.net/DHS-FBI-AndroidThreats.pdf>.

¹⁰ See 2019 Mobile App Threat Landscape Report, RiskIQ (2019), <https://www.riskiq.com/research/2019-mobile-threat-landscape-report/>.

necessarily related to the primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc'ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009). Due to the compound nature of the interrogatories as drafted, Apple objects to this Interrogatory because it is excessive as Plaintiff has exceeded the 25-written-interrogatory limit per party pursuant to Fed. R. Civ. P. 33(a)(1). Apple further objects to this Interrogatory to the extent that it is overbroad and seeks information that is neither relevant to the subject matter of this litigation nor proportional to the needs of the case. Apple further objects to this Interrogatory because it calls for a legal conclusion.

INTERROGATORY NO. 8:

Identify all the steps You take to review an App before approving it for distribution on the iOS App Store and macOS App Store, including (i) all automated or mechanized steps, (ii) all steps taken by human reviewers, and (iii) all tools utilized by Apple in the review process, Including in each case steps and tools that are used only in certain circumstances, and how those steps and tools have changed since the iOS App Store and macOS App Store were launched through today.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 8:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because the definition of “State the Factual Basis” is impermissibly vague, ambiguous, overly broad, and unduly burdensome in purporting to require Apple to “state with particularity each and every fact that You contend supports that response, contention, allegation, claim, defense, or statement, Including the basis and source of Your knowledge of each fact.” “‘Each and every fact’ interrogatories pose problems for a responding party and a reviewing court. Parties are not tasked with laying out every jot and tittle of their evidentiary case in response to interrogatories.” *Tubbs v. Sacramento Cty. Jail*, 2008 WL 863974, at *1 (E.D. Cal. Mar. 28, 2008) (quoting *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007)). Apple further objects to this Interrogatory because it is premature, given that discovery in this case is ongoing. Apple further objects to this Interrogatory because it is compound as it contains numerous discrete subparts that introduce separate and distinct lines of inquiry that are not logically and factually subsumed within and

necessarily related to the primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc'ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009). Due to the compound nature of the interrogatories as drafted, Apple objects to this Interrogatory because it is excessive as Plaintiff has exceeded the 25-written-interrogatory limit per party pursuant to Fed. R. Civ. P. 33(a)(1). Apple further objects to this Interrogatory to the extent that it is overbroad and seeks information that is neither relevant to the subject matter of this litigation nor proportional to the needs of the case. Apple further objects to this Interrogatory because it seeks Apple's protected trade secrets and other sensitive, proprietary information that would pose security and business risks to Apple and risks to Apple users' security and privacy if disclosed. Thus, the burden of fully responding would outweigh the utility of this information. Apple further objects to this Interrogatory because it is impermissibly vague and ambiguous, including as to the following undefined terms or phrases: "automated or mechanized steps," "steps taken by human reviewers," and "tools utilized by Apple in the review process," which prevent Apple from responding in any meaningful way and without accepting Plaintiff's improper characterizations.

Subject to, limited by, and without waiving its objections, Apple responds as follows:

The foundation of the App Store is that consumers can safely and easily download apps for their iPhones and iPads that perform as promised, do not jeopardize the security, stability, or reliability of their devices, and offer the privacy protections that consumers have come to expect from Apple. Toward that end, Apple undertakes a rigorous, human-led review process for every app (including apps that Apple itself offers on the App Store)—with reviewers representing 81 languages vetting on average 100,000 submissions per week—to ensure that each app functions as intended and complies with Apple's stringent requirements on security and protection of customer privacy, among other things. The app review process is guided by a series of agreements and guidelines governing Apple's relationship with developers.

Specifically, to participate in Apple's Developer Program, gain access to Apple's extensive library of app development software, and receive the distribution, marketing, and other services that Apple provides through the App Store, a developer must enter into certain contracts with Apple—most notably (1) the Developer Agreement ("Developer Agreement") and (2) the Developer Program

License Agreement (“License Agreement”). In order to distribute apps on the App Store, a developer must also join the Apple Developer Program by executing a License Agreement and paying a \$99 annual program fee. The License Agreement governs distribution of apps through the App Store and provides access to the full suite of developer tools, software, and other intellectual property for app creation that Apple maintains for the Developer Program. Distribution of free apps through the App Store is governed by Schedule 1 to the License Agreement. Distribution of paid apps or apps offering in-app purchases through the App Store requires execution of an additional Schedule 2 to the License Agreement. In addition, the App Store Guidelines provide the rules and requirements relating to Apple’s review of apps for possible publication on the App Store, and are incorporated by reference throughout the License Agreement. All developers on the App Store have agreed to abide by the terms of the Guidelines. The provisions in the above-referenced documents describe Apple’s app review process.

Apple’s human-led app review process involves uniformly applying the Guidelines, as well as related provisions in the Developer Agreement and License Agreement, to all developers. The process is designed to uphold Apple’s standards, including by confirming that the app is free from known malware, using signatures and encryption to ensure safe distribution via the App Store, verifying of digital signatures upon download to confirm that the app has not been tampered with or altered in any way, and revoking of signing certificates for developer accounts determined to be malicious.

In addition to the above response, Apple has produced to Epic an extensive number of documents from the agreed custodians reflecting Apple’s app review process.

INTERROGATORY NO. 9:

State whether You contend that Uber and other Apps that do not pay Apple a commission for IAP are free-riding on Apple’s investment in iOS and/or the iOS App Store, and/or are subsidized by Apps using IAP, and State the Factual Basis for Your position.

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 9:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because it is impermissibly vague and ambiguous, including as to the undefined term “subsidized,” which prevents Apple from responding in any meaningful way and without accepting Plaintiff’s improper characterizations. Apple further objects to this Interrogatory because it improperly seeks a response that is the province of expert testimony well in advance of the parties’ deadline for disclosing expert reports. Apple further objects to this Interrogatory because it is compound as it contains at least two discrete subparts that introduce separate and distinct lines of inquiry that are not logically and factually subsumed within and necessarily related to the primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc’ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009). Due to the compound nature of the interrogatories as drafted, Apple objects to this Interrogatory because it is excessive as Plaintiff has exceeded the 25-written-interrogatory limit per party pursuant to Fed. R. Civ. P. 33(a)(1). Apple further objects to this Interrogatory to the extent that it is overbroad and seeks information that is neither relevant to the subject matter of this litigation nor proportional to the needs of the case. Apple further objects to this Interrogatory because it calls for a legal conclusion.

Subject to, limited by, and without waiving its objections, Apple responds as follows:

Apple makes no such contention as to Uber and contends rather that developers, like Epic, who circumvent their obligations under the License Agreement and other relevant agreements to pay Apple a commission are free-riding on Apple’s investments. *See Schmalensee Decl.* at ¶¶ 55–64.

INTERROGATORY NO. 10:

Identify how “Apple estimates costs allocated to the App Store” and “Apple’s ‘methodology’ for generating App Store-specific financial information”, Including any methodology (Including any apportionment and/or allocation methods) by which Apple generates iOS App Store-specific and/or macOS App Store-specific profit and loss and gross margin information. (Apple’s 11/11/20 Draft Joint Letter Brief Regarding Apple’s Production of Cost and Expense Documents and Data, at 2 & n.5.)

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 10:

Apple objects to this Interrogatory because it is vague and ambiguous in its use of the undefined phrase “Apple’s ‘methodology’ for generating App Store-specific financial information,” which Apple

1 previously used in reference to an ill-defined demand from class plaintiffs in the related App Store
 2 antitrust cases. *See* Apple’s 11/10/2020 Draft Joint Letter Brief Regarding Apple’s Production of Cost
 3 and Expense Documents and Data (the Interrogatory erroneously lists the date of this document as
 4 11/11/20), at n.5. Apple further objects to this Interrogatory because it is overbroad and unduly
 5 burdensome in its demand for all ways in which Apple might estimate costs allocated to the App Store
 6 or generate App Store-specific financial information. Apple further objects to this interrogatory to the
 7 extent that the requested information is available in documents that Apple has produced in response to
 8 requests from Epic and class plaintiffs in the related App Store antitrust litigation. Apple further objects
 9 to this Interrogatory because it violates Federal Rule of Civil Procedure 33(b)(1)(B) in that answering
 10 it would require Apple to furnish information that is not available to it and/or cannot be given without
 11 undue labor and expense. Under Rule 33, a responding party “must furnish information that is
 12 *available to it* and that can be given *without undue labor and expense*.” Wright & Miller, Fed. Prac.
 13 & Proc. § 2174 (3d ed.) (emphasis added); *see also* Fed. R. Civ. P. 33(b)(1)(B). Parties are “not
 14 required to conduct extensive research in order to answer an interrogatory,” *Gorrell v. Sneath*, 292
 15 F.R.D. 629, 632 (E.D. Cal. 2013), and “interrogatories that require a party to undertake extensive
 16 investigations, research, or compilations or evaluations of data for the opposing party”—as this
 17 Interrogatory undoubtedly does—“are in many circumstances,” as here, “improper.” Wright & Miller,
 18 *supra*, § 2174. Apple further objects to this Interrogatory on the grounds that it improperly seeks a
 19 response that is the province of expert testimony well in advance of the parties’ deadline for disclosing
 20 expert reports. *See* ABA Section of Antitrust Law, Antitrust Law Developments (8th ed. 2017), at 288.

21 Subject to and without waiving the foregoing objections, and subject to the ongoing nature of
 22 discovery in this action, Apple responds as follows:

23 Apple does not, in the ordinary course of its business, maintain profit and loss ledgers for the
 24 App Store, and the devices and platforms in Apple’s ecosystem are characterized by substantial joint
 25 costs, not all of which are allocated for accounting purposes or otherwise. However, from time to time,
 26 Apple’s Finance Department creates profit and loss reports for services of which the App Store is a
 27 part. These reports are compiled using certain assumptions about certain corporate costs in order to
 28

1 allocate portions of them to iTunes. Further, such reports and data may be used by others within Apple
2 to create estimates for certain limited purposes from time to time that pertain to the App Store.

3 **INTERROGATORY NO. 11:**

4 Identify all persons involved, as well as their respective roles, in drafting, developing, revising,
5 and/or permitting modifications of, exceptions to, or exemptions from the provisions now appearing in
6 Section 3.2(g), Section 3.3.2(b) or Section 3.3.3 of the Apple Developer Program License Agreement,
7 or Section 3.1.1 (first bulleted paragraph), Section 3.1.3 (including subparts) or Section 3.2.2(i) of
8 Apple's App Store Review Guidelines (or in any provisions similar to any of the foregoing in effect at
9 the relevant time).

10 **OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 11:**

11 Apple restates and incorporates its Preliminary Statement, General Objections, Objections to
12 Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further
13 objects to this Interrogatory on the following grounds:

14 Apple objects to this Interrogatory because it is impermissibly vague and ambiguous,
15 including as to the following undefined terms or phrases: "drafting," "developing," "revising," and
16 "permitting modifications of, exceptions to, or exemptions from," which prevent Apple from
17 responding in any meaningful way and without accepting Plaintiff's improper characterizations.
18 Apple further objects to this Interrogatory because it is compound as it contains numerous discrete
19 subparts that introduce separate and distinct lines of inquiry that are not logically and factually
20 subsumed within and necessarily related to the primary question. *See Hasan v. Johnson*, 2012 WL
21 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc 'ns v. Earhugger, Inc.*, 257 F.R.D. 215,
22 217–18 (C.D. Cal. 2009). Due to the compound nature of the interrogatories as drafted, Apple
23 objects to this Interrogatory because it is excessive as Plaintiff has exceeded the 25-written-
24 interrogatory limit per party pursuant to Fed. R. Civ. P. 33(a)(1). Apple further objects to this
25 Interrogatory because it is overbroad and seeks information that is neither relevant to the subject
26 matter of this litigation nor proportional to the needs of the case. Apple further objects to this
27 Interrogatory because it calls for a legal conclusion.

1 Subject to, limited by, and without waiving its objections, Apple responds as follows: Apple
 2 has not permitted any modifications, exceptions to, or exemptions from the provisions identified in this
 3 Interrogatory.

4 **INTERROGATORY NO. 12:**

5 Identify all Developers, Including their respective App(s), who have requested a modification
 6 of, an exception to, and/or an exemption from the provisions now appearing in Section 3.2(g), Section
 7 3.3.2(b) or Section 3.3.3 of the Apple Developer Program License Agreement, or Section 3.1.1 (first
 8 bulleted paragraph), Section 3.1.3 (including subparts) or Section 3.2.2(i) of Apple's App Store Review
 9 Guidelines (or in any provisions similar to any of the foregoing in effect at the time such request was
 10 made); for whom Apple has decided to create, adopt or modify, and/or allow an exception to or an
 11 exemption from, the provisions now appearing in Section 3.2(g), Section 3.3.2(b) or Section 3.3.3 of
 12 the Apple Developer Program License Agreement, or Section 3.1.1 (first bulleted paragraph), Section
 13 3.1.3 (including subparts) or Section 3.2.2(i) of Apple's App Store Review Guidelines (or in any
 14 provisions similar to any of the foregoing in effect at the time such decision was made); and/or who
 15 are associated with any Apple Developer Program accounts terminated as a result of the Developer's
 16 introduction or proposed or threatened introduction of a non-IAP payment method into the Developer's
 17 App(s), Including the "over 2,000 accounts [terminated] for introducing a non-IAP payment method"
 18 (Defendant Apple Inc.'s Opposition to Epic Games, Inc.'s Motion for a Preliminary Injunction (ECF
 19 No. 73) at 8).

20 **OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 12:**

21 Apple restates and incorporates its Preliminary Statement, General Objections, Objections to
 22 Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further
 23 objects to this Interrogatory on the following grounds:

24 Apple objects to this Interrogatory because it is impermissibly vague and ambiguous,
 25 including as to the following undefined terms or phrases: "modification of, an exception to, and/or an
 26 exemption from," and "create, adopt or modify, and/or allow an exception to or an exemption from,"
 27 which prevent Apple from responding in any meaningful way and without accepting Plaintiff's
 28 improper characterizations. Apple further objects to this Interrogatory because it seeks information

(1) in which individuals/entities have a legitimate expectation or right of privacy or confidentiality under California law, and any other constitutional, statutory, or common law right of privacy, or (2) that is otherwise protected by federal and state constitutional, statutory, and/or common law rights of privacy of individuals or persons who are not parties to this lawsuit. Apple further objects to this Interrogatory because it is compound as it contains numerous discrete subparts that introduce separate and distinct lines of inquiry that are not logically and factually subsumed within and necessarily related to the primary question. *See Hasan v. Johnson*, 2012 WL 569370, at *5 (E.D. Cal. Feb. 21, 2012); *Superior Commc'ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217–18 (C.D. Cal. 2009). Due to the compound nature of the interrogatories as drafted, Apple objects to this Interrogatory on the ground that it is excessive as Plaintiff has exceeded the 25-written-interrogatory limit per party pursuant to Fed. R. Civ. P. 33(a)(1). Apple further objects to this Interrogatory because it violates Federal Rule of Civil Procedure 33(b)(1)(B), because answering it would require Apple to furnish information that is not available to it and/or cannot be given without undue labor and expense. Under Rule 33, a responding party “must furnish information that is *available to it* and that can be given *without undue labor and expense*.” Wright & Miller, Fed. Prac. & Proc. § 2174 (3d ed.) (emphasis added); *see also* Fed. R. Civ. P. 33(b)(1)(B). Parties are “not required to conduct extensive research in order to answer an interrogatory,” *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013), and “interrogatories that require a party to undertake extensive investigations, research, or compilations or evaluations of data for the opposing party”—as this Interrogatory undoubtedly does—“are in many circumstances,” as here, “improper.” Wright & Miller, *supra*, § 2174. Apple further objects to this Interrogatory to the extent that it is overbroad and seeks information that is neither relevant to the subject matter of this litigation nor proportional to the needs of the case.

Subject to, limited by, and without waiving its objections, Apple responds as follows: Apple is willing to meet and confer with Plaintiff regarding this Interrogatory.

INTERROGATORY NO. 13:

Identify the Apple employee whose communication with the Developer of the Dash App was recorded and subsequently made publicly available. (Dash and Apple: My Side of the Story, <https://blog.kapeli.com/dash-and-apple-my-side-of-the-story>.)

OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 13:

Apple restates and incorporates its Preliminary Statement, General Objections, Objections to Definitions, and Objections to Instructions as though fully set forth in this Response. Apple further objects to this Interrogatory on the following grounds:

Apple objects to this Interrogatory because it seeks information that is not relevant to the subject matter of this litigation. Apple further objects to this Interrogatory to the extent it seeks information related to individuals or entities that are not relevant to the allegations in the Complaint.

Dated: December 11, 2020

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Jay P. Srinivasan
Theodore J. Boutrous Jr.
Richard J. Doren
Daniel G. Swanson
Mark A. Perry
Veronica S. Lewis
Cynthia E. Richman
Jay P. Srinivasan

Attorneys for Defendant APPLE INC.

CERTIFICATE OF SERVICE

I, Betty X. Yang, hereby certify that I am a citizen of the United States, over the age of eighteen, and not a party to this action. I hereby certify that on December 11, 2020, I delivered the foregoing DEFENDANT APPLE INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF EPIC GAMES, INC.'S FIRST SET OF INTERROGATORIES, via electronic mail, pursuant to an agreement among the parties for electronic service, to the following counsel in this action and the related actions:

PAUL R. RIEHLE
paul.riehle@faegredrinker.com
**FAEGRE DRINKER BIDDLE &
REATH LLP**

CHRISTINE A. VARNEY
cvarney@cravath.com
KATHERINE B. FORREST
kforrest@cravath.com
GARY A. BORNSTEIN
gbornstein@cravath.com
YONATAN EVEN
yeven@cravath.com
LAUREN A. MOSKOWITZ
lmoskowitz@cravath.com
M. BRENT BYARS
mbyars@cravath.com
CRAVATH, SWAINE & MOORE LLP

Counsel to Epic Games, Inc.

STEVE W. BERMAN
steve@hbsslaw.com
ROBERT F. LOPEZ
robl@hbsslaw.com
SHANA E. SCARLETT
shanas@hbsslaw.com
BENJAMIN J. SIEGEL
bens@hbsslaw.com
HAGENS BERMAN SOBOL SHAPIRO LLP

Interim Class Counsel for the Developer Plaintiffs

MARK C. RIFKIN
rifkin@whafh.com
RACHELE R. BYRD
byrd@whafh.com
MATTHEW M. GUINEY
guiney@whafh.com
BRITTANY N. DEJONG
dejong@whafh.com
**WOLF HALDENSTEIN ADLER FREEMAN
& HERZ LLP**

Interim Class Counsel for the Consumer Plaintiffs

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th day of December, 2020, at Dallas, Texas.

/s/ Betty X. Yang

Betty X. Yang